WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2131

IN THE MATTER OF: Served July 30, 1980

Application of JAMES M. SMITH,   )   Case No. MP-80-16
INC., for Waiver of Commission   )
Regulation No. 70-05 and for   )
Acceptance of Related Application   )

         By petition filed July 16, 1980, James M. Smith, Inc., seeks a
waiver of Commission Regulation No. 70-05 which provides, in pertinent
part, that

         (a)ll contracts and extensions and renewals of
         contracts filed pursuant to this regulation shall be
         for fixed terms of not less than 181 days.

Smith seeks the waiver so that its application for authority to
transport passengers, in charter operations pursuant to contract with
the United States Department of Agriculture, Science and Education
Administration (DASEA), between DASEA facilities located in Washington,
D. C., and Beltsville, Md., may be accepted for filing. The period of
performance is from the effective date of the contract (anytime after
June 2, 1980) to September 30, 1980. The contract also has an option
period from October 1, 1980, through September 30, 1981. The option to
extend service for that year is with DASEA and it is clear that DASEA
is under no legal obligation to exercise the option. Inasmuch as the
contract is clearly not for a period of at least 181-days, no purpose
would be served by discussing petitioner's arguments regarding "the
totality of the transaction. . . ."

         As Smith points out, the express purpose of Regulation No. 70
is to streamline the certification process and stimulate the growth of
the charter contract market. Applicant and DASEA (in a supporting
affidavit) contend that this purpose would be substantially frustrated
absent the requested waiver inasmuch as DASEA cannot now commit funds
beyond its current fiscal year which expires September 30, 1980.

While applicant's argument is not without some appeal, we believe that other considerations outweigh its merits. First, we note that DASEA's contract for the identical service with Beltway Limousine Service, Inc., expired September 30, 1979, and that Beltway has since been providing the service under a series of short-term purchase orders. No explanation has been offered regarding DASEA's failure timely to rebid the contract. We also believe that neither Smith nor DASEA should be surprised by the 181-day rule inasmuch as they were both parties to Case No. MP-79-04 in which Regulation No. 70 was adopted. Smith, in fact, raised similar arguments in that proceeding, asserting that the 181-day minimum period was too long, inasmuch as government agencies often let contracts for shorter periods of time.

Beltway Limousine Service, Inc., in its opposition filed July 24, 1980, replies to Smith's contention by quoting from the Commission's findings in Case No. MP-79-04.
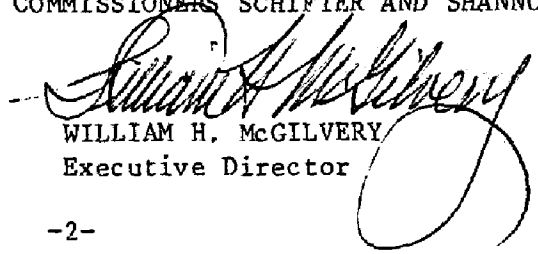
> As for the contention that the 181-day minimum contract period is too long, we believe that this time frame will present abuses of the eased market-entry system and appropriately preserve the short-term charter market for carriers holding general charter authority. Applications may still be filed for charter-pursuant-to-contract authority beyond the scope of Regulation No. 70, and up to 180 days temporary authority may be granted where statutory criteria are met. */

In our view, applicant has advanced no argument serious enough to warrant out departure from this philosophy. The existing rule protects against abuses, insures that the group being transported will have a stable, enduring relationship with the transportation purchaser, and avoids any conflict of interpretation or transgression of the limitations imposed on our discretion by Title II, Article XII, Section 4(d)(3) of the Compact governing temporary authority.

THEREFORE, IT IS ORDERED that the above-captioned petition of James M. Smith, Inc., is hereby denied, and that the related application stands rejected.

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*/ Order No. 2004, served June 20, 1979, page 11.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTER AND SHANNON:

WILLIAM H. McGILVERY
Executive Director

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